

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**



**FILED**

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Order Instituting Rulemaking to Consider the Adoption of a General Order and Procedures to Implement the Digital Infrastructure and Video Competition Act of 2006	R.06-10-005
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**RESPONSE OF THE CONSUMER FEDERATION OF CALIFORNIA  
IN SUPPORT OF THE APPLICATIONS OF THE GREENLINING INSTITUTE  
AND TURN FOR REHEARING OF D.07-03-014**

The Consumer Federation of California ("CFC") supports the Applications of TURN and the Greenlining Institute for rehearing of the Commission's "Decision Adopting A General Order And Procedures To Implement The Digital Infrastructure And Video Competition Act of 2006," D.07-03-014. In particular, CFC joins in TURN's and the Greenlining Institute's requests for reconsideration of the Commission's interpretation of its authority to consider public comment on franchise applications.

In Comments on the Proposed Decision, the CFC argued the Commission had erroneously concluded in the Proposed Decision that the Digital Infrastructure and Video Competition Act of 2006 ("DIVCA") granted the Commission only ministerial power to process an application. (CFC Comments on Proposed Decision, filed February 5, 2007). The Commission nevertheless adopted that conclusion in paragraph 53 of D.07-03-014:

DIVCA provides the Commission with no discretion over the substance or timing of its review of applications for a video franchise. The substance of the Commission's review is limited to the ministerial task of determining whether the application is complete.

The Commission erred in concluding its powers are ministerial.

The Commission exercised discretionary authority when it decided to “award a state video franchise only if an applicant states in its application affidavit that it and all its affiliates’ operations will be included for the purposes of applying Public Utilities Code §§ 5840, 5890, 5940, and 5960.” (D.07-03-014 at 40). The Commission exercised discretionary authority when it found that “requiring a bond is a satisfactory and efficient way to determine whether applicants possess financial, legal, and technical qualifications necessary to be state video franchise holders.” (D.07-03-014 at 75).

It would be arbitrary and capricious for the Commission to find it had authority to exercise discretion in some instances, but not in others, without providing a rational explanation for its choices. The Commission has not provided a reasoned explanation for its decision that “there is no room for discretion, and as a result, no process or time for protests” under DIVCA. (D.07-03-014 at 95).

In fact, the Commission does have discretionary authority to permit protests, and should exercise it. The legislature found and declared that “the public interest is best served by a commission that is appropriately funded and staffed, that can thoroughly examine the issues before it, and that can take timely and well-considered action on matters before it.” PU Code section 401(a). The legislature has provided for funding and staffing of the Commission because:

The public interest is best served when sufficient funds are appropriated to the commission to provide adequate staff and resources to appropriately and timely process applications of video

service providers and to ensure full compliance with the requirements of this division.

P.U. Code sec. 5810(3)(*emphasis added*).

If the Commission's role were ministerial, there would be no need for the Governor to have budgeted \$1 million to fund DIVCA and 10 more staff people for the 2007-2008 fiscal year, or for the Commission to impose an additional \$2,000 fee for each application for a franchise. (D.07-03-014 at 112-115 & Finding of Fact No. 74). CFC agrees with the League of Cities/SCAN NATOA that the Commission should provide a more detailed explanation of how the \$1 million estimate of its costs was derived, and of the need for an application fee, in light of the Commission's determination that its role is solely ministerial.

WHEREFORE the Consumer Federation of California respectfully requests the Commission to reconsider its decision to exclude the public from the franchise application process.

Dated: April 18, 2007

Respectfully submitted,

CONSUMER FEDERATION OF CALIFORNIA

By: //s//Alexis K. Wodtke

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**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Consider the Adoption of a General Order and Procedures to Implement the Digital Infrastructure and Video Competition Act of 2006	R.06-10-005
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**CERTIFICATE OF SERVICE**

I hereby certify that on April 19, 2007, I emailed to all parties listed on the service list in Docket No. R.06-10-005 an electronic version of the:

**RESPONSE OF THE CONSUMER FEDERATION OF CALIFORNIA IN  
SUPPORT OF THE APPLICATIONS OF THE GREENLINING  
INSTITUTE AND TURN FOR REHEARING OF D.07-03-014**

with the exception of the following:

Aaron C. Harp Office of the City Attorney City of Newport Beach 3300 Newport Blvd. Newport Beach, CA 92658	Rob Wishner City of Walnut 21201 LaPuente Road Walnut, CA 91789
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who were served by causing the Comments, enclosed in envelopes addressed to them and with postage prepaid, to be deposited in the U.S. Mail. The names and email addresses of parties and interested persons to whom the Comments were emailed are shown on an attachment to this Certificate.

Dated: April 19, 2007 at San Mateo, CA.

*//s/ Alexis K. Wodtke*  
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